Filed 6/26/19 In re M.N. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.N., et al., Persons Coming Under the Juvenile Court Law.	B292809 (Los Angeles County Super. Ct. No. 17CCJP00293)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. IRMA A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Commissioner. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

Amir Pichvai for Plaintiff and Respondent.

Maternal grandmother Irma A. (grandmother) appeals from the juvenile court's order denying her request to place her granddaughters M.N. and R.N. with her pursuant to the relative placement preference under Welfare and Institutions Code[1] section 361.3. Grandmother's sole contention on appeal is that the hearing on her request was unfair because the juvenile court questioned her directly before allowing the parties to do so, and announced its ruling before inviting argument. Grandmother did not raise these objections in the juvenile court; thus, she has forfeited these challenges on appeal. Even if grandmother did not forfeit her challenges to the fairness of the hearing, we conclude there was no error in the juvenile court's handling of the hearing, and if there were any error, grandmother has failed to demonstrate prejudice. Accordingly, we affirm.

BACKGROUND

The record on appeal is limited. The clerk's transcript contains only documents dated on or after September 19, 2018, the date of the hearing on grandmother's placement request, and the reporter's transcript contains only that hearing and the initial detention hearing from a year earlier. Missing, among other things, are the original section 300 petition seeking to detain the children, the juvenile court's minute orders concerning detention, jurisdiction, and adjudication, and any reports filed by the Los Angeles County Department of Children and Family Services (DCFS, respondent here).[2]

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[1] Further undesignated statutory citations are to the Welfare and Institutions Code.

[2] We cannot determine why the record is so limited. The day after the hearing on grandmother's placement request,

Because the sole challenge in this appeal is to the fairness of the hearing on grandmother's placement request, of which we have both a transcript and related minute order, we deem the record sufficient to assess the challenge, but our summary of the background facts and procedural history necessarily is sparse.

On September 15, 2017, the juvenile court ordered newborn twins M.N. and R.N. detained based on allegations of mother's and father's substance abuse and mother's history of mental health issues. The juvenile court removed the children from the parents' custody and later placed them with foster parents who expressed a commitment to adopt them.

On September 19, 2018, the juvenile court held a hearing pursuant to section 366.26. Because grandmother's appeal centers on the fairness of that hearing, and in particular the juvenile court's questions to her during the hearing, we provide the following detailed summary of the proceeding.

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grandmother filed two form JV-570 requests for disclosure of a juvenile case file, one for each child. Approximately two months later, the juvenile court issued two orders after judicial review, one of which granted grandmother the "Entire Clerk's Transcript" for M.N.'s case, subject to redaction requirements under various statutes and court rules. The record on appeal is missing the attachment to the second order after judicial review, so we cannot determine if the juvenile court also granted grandmother the entire clerk's transcript in R.N.'s case. In any event, the record on appeal clearly does not contain the "Entire Clerk's Transcript" from M.N.'s case. To the extent this was error, the record does not indicate that grandmother or her appellate counsel attempted to remedy it.

1. Examination of grandmother

The juvenile court announced at the outset that "[a]doption has been the identified plan with [a] non-relative caretaker," meaning the foster parents, and that notice to mother and father was proper but neither was present.

The juvenile court noted that grandmother was present and asked her about mother's absence. Grandmother said mother did not live with her, she did not know why mother was not present, and she had last seen mother a month earlier.

The juvenile court said to grandmother, "You may [ ] recall that you have had interviews with the social workers on this case. The court has received various reports regarding your home situation." The juvenile court continued: "Let me first inquire, pursuant to [section] 361.3 are you requesting today that the court consider placing the children in your custody or are you just requesting visits with the children?" Grandmother said she would like the children to be placed with her.

The juvenile court stated that it would ask grandmother questions "regarding factors that are of relevance to the court when a request is made by a relative[ ] who has preferential consideration for placement such as yourself." The juvenile court stated that it had "previously received information regarding [grandmother's] request for placement of the children and ha[d] previously denied any further assessment" of the request.

The juvenile court asked grandmother about her visits with the children. Grandmother stated that she had accompanied mother on her visits, the last one having been two weeks prior. According to grandmother, she and mother had visited the children between one and three times a month, although she acknowledged, as a social worker reported, that mother (and

therefore grandmother) had missed most of the scheduled visits during some months.

The juvenile court then swore in grandmother and asked whether grandmother's visits with the children were monitored.[3] Grandmother stated that a social worker monitored her visits, which lasted two and a half hours. The juvenile court asked grandmother why she was seeking placement of the children. Grandmother responded, "I would not like them to stay in another place. I do not know how they are going to be treated."

The juvenile court asked grandmother about a previous juvenile court case involving the children's mother when she was a minor. Grandmother said mother had lit a fire at her high school. The juvenile court asked whether a social worker had been assigned in that earlier case, and whether grandmother had been ordered to participate in programs. Grandmother said a social worker had supervised her for three months, and that she participated in wraparound services and parenting classes.

The juvenile court asked whether grandmother's husband was related to the children and whether he had met them. Grandmother stated he was not a blood relative of the children and had never met them. The juvenile court asked about her living situation. She stated that she and her husband were the only people living in their house, which they had rented for about six months. She said her husband's two sons had been in the house "on vacation" but were no longer there.

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[3] The reporter's transcript states that grandmother testified through a Spanish interpreter at the time the juvenile court swore her in. The transcript does not indicate whether an interpreter assisted grandmother earlier in the hearing.

The juvenile court asked grandmother about her and her husband's work. She said she worked as a cook six days a week from 8:00 a.m. to 5:00 p.m. Her husband worked as a dishwasher at a restaurant.

The juvenile court asked more questions about grandmother's visits with the children, including how the children reacted to grandmother's arrival and departure and what language she spoke with them. Grandmother said the children were happy to see her and would hold out their arms for her to hug them. She said they did not cry when she left. She said she did not speak English and spoke to the children in Spanish.

The juvenile court asked who would care for the children if grandmother was working six days a week. Grandmother said, "I have people that could take care of them while I work. As a matter of fact, my husband works afternoons and I work in the day." The juvenile court confirmed that the husband had never met the children, and asked if grandmother had ever asked that her husband be permitted to visit. Grandmother stated that her husband said that the children were "too small" for him but had wanted to participate in the visits, although the social worker would not allow it.

The juvenile court asked if grandmother had spoken to mother about coming to court that day. Grandmother said she had called and texted her, and that mother had said she was on her way, but never arrived.

The juvenile court asked if the social worker had asked grandmother's husband to provide his fingerprints, and grandmother said he had provided them when she had provided

hers. The juvenile court asked if grandmother's husband had any criminal convictions as an adult and she said no.

The juvenile court asked how many bedrooms grandmother's house had, and asked again if only she and her husband lived there. Grandmother said she had two bedrooms and confirmed only she and her husband lived there. The juvenile court asked if grandmother knew the children had special needs, and she said she did and would be willing to address those needs.

The juvenile court asked if it was true that grandmother had told a social worker she believed mother had mental problems. Grandmother said, "Truth is I never really thought that [mother] has that problem because since she was with the social worker they would give her the medication and she never took it." The juvenile court said, "So would it be fair to say that you don't think [mother] has any mental health issues that need medication?" Grandmother replied, "She never really took the medication. I really don't know. She would only do it to manipulate the people." The juvenile court asked, "Do you believe that [mother] needs treatment for mental health issues?" Grandmother answered, "I don't think so. What I do think she needs treatment for is drugs. For that, I do think so."

The juvenile court asked if grandmother would allow mother to visit her home if the juvenile court placed the children with grandmother. Grandmother said no, "because if [mother] does not go and do treatment that would be a bad example for the children. I want her to be well."

The juvenile court asked how old grandmother and her husband were, and she responded 45 and 50, respectively.

Grandmother said she had never been arrested for a crime as an adult.

The juvenile court noted that the children had been born in September 2017, and asked in what month grandmother had first asked the social worker that the children be placed with her. Grandmother said she had asked "around April" of 2018. Grandmother volunteered that the social worker had asked why grandmother had waited until then to request placement. The juvenile court asked what grandmother had told the social worker, and grandmother said, "My response was I [had] given time [ ] so [mother] could do the right thing. That her love as a mother would make her stop doing drugs."

The juvenile court asked grandmother if she had ever asked the social worker what special needs the children had. Grandmother said yes, but that the social worker had said she could not provide that information since it was not grandmother's case. The juvenile court asked grandmother if she had ever asked for unmonitored visits with the children, and grandmother said the social worker "always tells us that we have to be supervised."

The juvenile court then invited counsel for DCFS to ask questions. DCFS's counsel asked about mother's father, the children's maternal grandfather. Grandmother said she no longer lived with mother's father, to whom she was never married. DCFS's counsel asked whether grandmother's prior dependency case when mother was a minor concerned more than the fire mother lit at school. Grandmother said, "The reasons why there was an open case was also because on one occasion [mother] tried to run away from the house in the night. So then I grabbed her by the arm. I pulled her. I was trying to pull her,

but she tried to pull away. So when I was trying to do that, I was also trying to give her one with a rope. I was trying to hit her right here, but she moved and it hit her on the leg."

DCFS's counsel asked whether grandmother had had two open dependency cases with her own children. Grandmother said, "I only had one. It was the same one." She said she was working with the social workers "[f]or about 15 or 8 years." DCFS's counsel asked if there had been allegations that mother's father had physically abused grandmother's children. Grandmother said her children had said that, but she never said that. DCFS's counsel asked whether mother's father abused drugs. Grandmother said she was "never aware" that mother's father abused drugs while living with her, although her son had told her mother's father had abused drugs.

DCFS's counsel asked if mother had told grandmother that grandmother's father, the children's maternal great-grandfather, had sexually abused mother between the ages of five and nine. Grandmother said, "She told me and when she told me that, I decided to move out from where I was living. I decided to live by myself."

DCFS's counsel asked about the social worker not being able to get fingerprints from everyone in grandmother's house. Grandmother explained her husband's two sons refused to give their fingerprints because they were just visiting on vacation. She said they were in Mexico now, and visited her husband every four or five years.

Counsel for the children then questioned grandmother. Children's counsel asked about the prior dependency case when mother was a minor. Grandmother said during that open case mother lived in a group home: "She lived there for about 8 years.

Sometimes they would close the case and they would return [her] to me . . . . She would be at my house for a while. She would, her own accord, feel uncomfortable at the house. So she would go to the office and tell them I do not want to live with my mom anymore, and they would open the case again."

The juvenile court invited both mother's and father's counsel to ask questions, and they declined.

The juvenile court asked grandmother if, were the children placed with her, she would need to continue working to support her household and find childcare for the children while she was working. Grandmother said yes. The juvenile court asked, "You don't have such a [childcare] plan today; correct? Other than your husband, who has never met the children; correct?" Grandmother confirmed that her plan was to have her husband watch the children while she was at work.

2. The juvenile court's findings and orders

The juvenile court proceeded to announce its findings. It stated that it had received a "very sparse" report on June 21, 2018 regarding grandmother's placement request, which stated that mother's and grandmother's visits to the children were infrequent and often cancelled, that grandmother "had little insight into mother's mental health," that there were two adults in grandmother's home who had refused to be fingerprinted, and that grandmother had had her own child welfare case during which mother was removed from her custody. The juvenile court said it "felt it incumbent upon the court" to conduct "[t]he inquiry required by [section] 361.3" because "grandmother is entitled to preferential consideration for placement of the children."

The juvenile court noted that the children had been removed from mother at birth and had "remained in one household their entire lives." Mother's and grandmother's visits were "infrequent and inconsistent at best" and continued to be monitored a year after they had begun. The juvenile court acknowledged the visits "appear[ed] to go well" and the children received some benefit "from the infrequent visits with the grandmother."

The juvenile court found that grandmother "is not equipped or prepared for the care of one year old toddler twins." Grandmother was aware the children had special needs, but did not know what those needs were, despite mother having access to that information and grandmother having contact with mother during the visits. The juvenile court found that grandmother's plan to have her husband, who had not met the children, supervise them while she was at work was "an inappropriate childcare plan." Even if grandmother found another caregiver or childcare facility, that would mean "strangers" would care for the children six days a week, whereas "the children are currently in a consistent stable home since birth."

The juvenile court noted that mother had not informed it of her desires regarding placement, but it was "clear" that grandmother and mother "had a conflictual relationship since [mother] was at least 8 years old," and that grandmother had a child welfare case when mother was a minor.

The juvenile court questioned grandmother's explanation that she had waited seven months to request placement of the children to give mother time to show she could be a fit parent, when grandmother "knew that [mother] was not a fit parent

because [mother] ha[d] suffered from behavioral issues and problems since she herself was an elementary-aged child by the grandmother's own testimony." Although grandmother testified she did not believe mother's mental health was an issue, the juvenile court found it "clear . . . that the mother has had a history of mental health issues that had impeded her ability to regain or to even have custody of her children since they were removed right at birth."

The juvenile court said it "cannot make a finding that the grandmother is able to exercise proper and effective care and control of the children given her own child welfare history and her limited monitored visits that have been inconsistent and irregular for over a year with these two children with special needs. I'm not sure that she can protect the child[ren] from the mother," with whom "[s]he continues to have an ongoing relationship." The juvenile court stated it was "of significant relevance" that grandmother shared a home with a husband who had never met the children yet would serve as "a primary caretaker."

Although the children's visits with grandmother had been positive, the juvenile court found "by clear and convincing evidence" that it would not be in the children's best interest to remove them from a stable, consistent placement and move them to a home with a grandmother with whom they had had "limited contact" and grandmother's husband, whom they did not know at all. The juvenile court denied grandmother's "request for placement pursuant to [section] 361.3" and stated that it would "proceed to make [section] 366.26 findings."

The juvenile court asked if counsel wished to be heard on grandmother's section 361.3 request. Counsel declined to speak further.

The juvenile court then conducted the section 366.26 proceedings, finding the children adoptable and terminating parental rights. The juvenile court designated the children's current foster parents as the prospective adoptive parents. The juvenile court explained to grandmother that it was declining to place the children with her "at this late date," and granted her a final visit and a photograph of the children. The juvenile court asked mother's counsel to answer any questions grandmother might have.

The juvenile court asked if grandmother had any questions for the court. Grandmother said, "Just one question. Can I have a chance? Just one chance?" The juvenile court responded, "Because of everything that I said on the record. Any further questions you might ask, [mother's] attorney will talk to you about this. It is a very difficult decision the court makes when it has to consider request[s] by relatives to move children from a stable, long-term placement to a relative, who comes late in the game. Well, I should say late in the proceedings. [¶] You testified that it was only this year in April that you asked for placement of the children. I have to consider not what's in your best interest as the grandmother, but what's in the best interest of your grandchildren. That is the reason I've made the orders I've made today."

Grandmother timely appealed.

DISCUSSION

A. Applicable Law

Section 361.3, subdivision (a) provides, in relevant part, "In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." " 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "Preferential consideration 'does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests.' " (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 376 (*Antonio G.*).)

Section 361.3, subdivision (a) contains a list of factors for the juvenile court and county social worker to consider "[i]n determining whether placement with a relative is appropriate," including "[t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs" (*id.*, subd. (a)(1)), "[t]he nature and duration of the relationship between the child and the relative" (*id.*, subd. (a)(6)), and the relative's ability to "[p]rovide a safe, secure, and stable environment for the child," "[e]xercise proper and effective care and control of the child," "[p]rovide a home and the necessities of life for the child," and "[p]rotect the child from his or her parents" (*id.*, subd. (a)(7)(A)–(D)).

This appeal raises questions that, given our holding affirming the juvenile court's order, we need not resolve. First, it is "unsettled whether a relative is entitled to preference [under section 361.3] when requested late in the proceedings, when the

child is in a stable placement following the disposition hearing and termination of reunification services," as appears to be the case here. (*In re Isabella G.* (2016) 246 Cal.App.4th 708, 721 (*Isabella G.*), citing *In re R.T.* (2015) 232 Cal.App.4th 1284, 1300.)[4] Here, the juvenile court concluded grandmother properly could invoke the placement preference when she did, and we assume without deciding that conclusion was correct.

Second, grandmother objects to the fairness of her hearing. The authority on whether she was entitled to a hearing in the first place is not entirely clear. (See *In re R.J.* (2008) 164 Cal.App.4th 219, 225 (*R.J.*) [grandmother, lacking constitutionally protected interest in care and custody of grandchildren, had no due process right to hearing on motion for de facto parent status]; California Rules of Court, rule 5.570(d)(1) [juvenile court may deny section 388 petition to modify prior orders without hearing if petition "fails to show that the requested modification would promote the best interest of the child"]; but see *Isabella G.*, *supra*, 246 Cal.App.4th at p. 712 [relative who requests placement prior to dispositional hearing is entitled to hearing under section 361.3 even if county child welfare agency does not complete relative home assessment prior to dispositional hearing].) We assume without deciding that grandmother was entitled to a hearing.

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[4] A relative's entitlement to the preference depends at least in part on whether the relative made the placement request prior to the juvenile court terminating reunification services. (See *Isabella G.*, *supra*, 246 Cal.App.4th at p. 723.) Given the limited record, we cannot determine whether grandmother made her placement request before termination of reunification services.

Finally, we assume without deciding that grandmother has standing to appeal. (Compare *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034–1035 (*Cesar V.*) [grandmother had standing to appeal denial of placement request under section 361.3], with *In re Miguel E.* (2004) 120 Cal.App.4th 521 [only child welfare agency, children, parents, guardians, de facto parents, and relatives who have sought to participate in proceedings have standing to appeal].) Given our holding, we do not address DCFS's argument to the contrary.

B. Analysis

Grandmother argues that the juvenile court denied her a fair hearing by questioning her extensively and announcing its ruling without allowing her to present argument. Grandmother contends the juvenile court improperly "served as both advocate and decision-maker." (See *In re G.B.* (2018) 28 Cal.App.5th 475, 487 (*G.B.*) [fair hearing requires " ' "impartial arbiter . . . who does not assume the functions of [an] advocate" ' "].)

G.B. concerned the fair hearing rights to which parents in dependency proceedings were constitutionally entitled under the due process clause of the United States Constitution. (*G.B.*, *supra*, 28 Cal.App.5th at p. 487.) Here, grandmother concedes she is a non-party and therefore "not entitled to the procedural due process afforded to parents and children." (See *R.J.*, *supra*, 164 Cal.App.4th at p. 225.) We nonetheless accept for purposes of this appeal that grandmother was entitled to have her placement request considered by an impartial arbiter, who did not also serve as an advocate.

Grandmother concedes that she did not object during the hearing to the juvenile court's conduct, nor did the parties, and the record does not reflect that she requested the opportunity to

present argument. In dependency proceedings, like other court proceedings, " '[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court.' " (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 590 (*Maria Q.*).)

Grandmother's challenge also fails on the merits. As she concedes, Evidence Code section 775 expressly permits a court to "call witnesses and interrogate them the same as if they had been produced by a party to the action." (See *In re S.C.* (2006) 138 Cal.App.4th 396, 423 ["It is well within the province of the judge to ask a witness questions, particularly when the judge is the fact finder"].) Grandmother also concedes that courts may ask questions to clarify evidence and further develop facts raised in testimony.

Here, the juvenile court appropriately asked questions to clarify relevant evidence and further develop facts. The juvenile court had received what it deemed a "very sparse" report from DCFS about grandmother indicating infrequent visits with the children, lack of insight into mother's mental health, adults in grandmother's house who refused to provide fingerprints, and grandmother's previous child welfare case involving mother as a minor. The juvenile court's questions clarified and further developed the points raised in the report to ensure the juvenile court had the information it needed to assess the necessary factors under section 361.3, including whether placement with grandmother would be in the children's best interest, the nature and duration of grandmother's relationship with the children, grandmother's ability to provide safe and effective care, and grandmother's ability to protect the children from their parents. (See *id.*, subds. (a)(1), (6), (7).) The transcript

of the hearing does not reflect that the juvenile court acted as an advocate for DCFS or any other party.

In her reply brief, grandmother argues for the first time that if the juvenile court found the report from DCFS "inadequate," it should have ordered DCFS to prepare a more thorough report or called as a witness the social worker who prepared the report. Grandmother also suggests that because the report is not in the record on appeal, we cannot determine why the juvenile court engaged in the questioning it did. We will not consider arguments raised for the first time in a reply brief. (*Santa Clara Waste Water Co. v. Allied World National Assurance Co.* (2017) 18 Cal.App.5th 881, 884, fn. 2 (*Santa Clara Waste Water Co.*).) Further, grandmother cites no authority that a juvenile court cannot supplement a DCFS report by asking its own questions of the subject of that report, nor does she explain how an additional report or questioning of the social worker would have led to a more favorable result for grandmother. (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 481 (*Alayah J.*) [no reversal unless " 'reasonably probable [that] the result would have been more favorable to the appealing party but for the [claimed] error' "].)

Grandmother claims the juvenile court "tipped over the line into an advocacy role" by questioning her about her prior child welfare history with mother, but grandmother's difficulties in raising her own child were certainly relevant and appropriately considered in assessing her ability to raise her grandchildren. Grandmother cites cases holding that a prior child welfare history does not automatically disqualify a relative from consideration under section 361.3 (see *Antonio G.*, *supra*, 159 Cal.App.4th at pp. 377–378; *Cesar V., supra*, 91 Cal.App.4th

at pp. 1027–1028, 1033), but those cases do not hold that the juvenile court may not take that history into consideration along with other evidence when determining whether placement with the relative is appropriate.

Further, it was counsel for DCFS and the children, not the juvenile court, who asked most of the questions to which grandmother objects concerning her past child welfare proceeding. To the extent grandmother claims the questions from counsel were objectionable, she forfeited that challenge by not objecting to that questioning during the hearing. (*Maria Q.*, *supra*, 28 Cal.App.5th at p. 590.) Regardless, counsel's questions about grandmother's past child welfare history were relevant and appropriate for the same reasons the juvenile court's questions were.

Grandmother's cited authorities in support of her argument that the hearing was unfair are inapposite. In *G.B.*, *supra*, 28 Cal.App.5th 475, the Court of Appeal held it was improper for a juvenile court to "assert[ ] its own allegations, based on facts and legal theories not at issue in the original [section 300] petition, and later adjudicate[ ] those allegations." (*G.B.*, at p. 488.) The juvenile court took no such action in the instant case.

In re Jesse G. (2005) 128 Cal.App.4th 724 (*Jesse G.*) involved a juvenile delinquency hearing to declare a minor a ward of the court because the minor's parent could no longer control him. (*Id.* at pp. 727–728.) The juvenile court removed the minor from his mother's custody and ordered him "suitably placed in the care, custody and control of the probation officer." (*Id.* at p. 727.) Division Eight of our Second District held that the juvenile court violated the minor's right to constitutional due

process when it presented and questioned the sole witness before adjudicating the minor's status. (*Id.* at p. 726.) Although the juvenile court had acted impartially and there was no indication of unfairness or injustice, Division Eight held the error was reversible per se. (*Id.* at pp. 730–731.)

The instant case, in contrast, does not involve a delinquency proceeding, and as we have noted earlier, grandmother expressly does not raise a due process challenge, conceding it is unavailable to her as a non-party. (See *R.J.*, *supra*, 164 Cal.App.4th at p. 225.) Moreover, this court has held that failure to grant the relative placement preference or to follow the proper procedures for doing so is not per se reversible, but is subject to harmless error analysis. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 (*Joseph T.*)). Further, the juvenile court in the instant case did not conduct the entire proceeding itself, as the court did in *Jesse G.*, but allowed the parties to question grandmother and present argument if they wished. *Jesse G.* therefore is both factually and legally distinguishable.

In *People v. Gates* (1979) 97 Cal.App.3d Supp. 10 (*Gates*), the Appellate Division of the Superior Court of Los Angeles County stated that, although a trial court could call and question witnesses pursuant to Evidence Code section 775, it was "the better practice, unless unusual circumstances indicate otherwise, for the judge to withhold his questioning or calling of a witness until after the parties have concluded their examination so as to give the parties a full opportunity to present all relevant evidence. We also conclude that allowing the parties the opportunity to call the witness or to interrogate prior to the judge

doing so helps achieve the impartiality required." (*Gates*, at p. 13.)

Gates involved a criminal jury trial where there is concern that a judge's questions might lead the jury to conclude that the judge favors a party or deems some items of evidence more important than others. (See *Gates*, *supra*, 97 Cal.App.3d Supp. at p. 13 ["only limitation" on court's power to call and question witnesses "is that the judge not show partiality or bias"].) This concern is absent in dependency proceedings in which the juvenile court serves as the finder of fact. Even assuming the principles of *Gates* apply in the dependency context, the *Gates* court notably did not hold that it was reversible error for a trial court to question witnesses before the parties did, because the trial court in that case asked its questions after the parties had done so. (See *id.* at p. 12.) Thus, *Gates* does not compel the conclusion that the juvenile court erred in the instant case by asking questions before inviting counsel to do so.

As for grandmother's claim that the juvenile court denied her a fair hearing by announcing its ruling before allowing argument, she cites no authority indicating this was improper. Courts frequently announce tentative rulings before inviting argument; while the juvenile court here did not indicate its ruling was tentative, its express invitation for further argument after announcing its ruling suggests it was open to changing its position if the parties had further comment.

Even assuming arguendo that the juvenile court acted improperly in questioning grandmother and announcing its ruling before inviting argument, grandmother fails to show that she suffered any prejudice. (*Alayah J.*, *supra*, 9 Cal.App.5th at p. 481 [no reversal unless " 'reasonably probable [that] the

result would have been more favorable to the appealing party but for the [claimed] error' "]; *Joseph T.*, *supra*, 163 Cal.App.4th at p. 798 [applying harmless error analysis to denial of relative placement preference].)

Grandmother does not dispute that her contact with the children was limited to inconsistent and infrequent monitored visits, that she had no knowledge of the children's specific special needs, that her childcare plan involved leaving the children with her husband who had reservations about taking care of such young children, and that she had a prior child welfare history involving mother. This was strong evidence supporting the juvenile court's conclusion that it would not be in the children's best interest to remove them from a stable foster care placement and place them with grandmother, particularly when grandmother had waited seven months to make the placement request, a delay grandmother does not attempt to justify on appeal. Grandmother does not identify any evidence or argument she was unable to provide in support of her placement request because of the manner in which the juvenile court conducted the hearing. She therefore has failed to show any reasonable probability of a more favorable outcome had the juvenile court conducted the proceedings differently.[5]

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[5] In the conclusion of her reply brief, grandmother claims she was "denied access to the full record," and because the record on appeal "leaves so much to speculation," she argues we "cannot be certain [g]randmother was provided with a fair hearing." Again, we will not consider an argument raised for the first time in a reply brief. (*Santa Clara Waste Water Co.*, *supra*, 18 Cal.App.5th at p. 884, fn. 2.) Regardless, as we have explained, the record is sufficient to resolve the issues grandmother has raised in this appeal.

Grandmother does not challenge the juvenile court's conclusion under section 361.3 that placement of the children with her would not be appropriate; her only contention is that the hearing was unfair. Our conclusion to the contrary thus resolves the only issue in this appeal.

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.